

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION**

**IN RE:            CERTIFICATION PROCESS                                :            DOCKET NO. 3438**  
**OF GAS SERVICE EMPLOYEES                                :**

**DIVISION'S RESPONSE TO COMMISSION'S**  
**FIRST SET OF LEGAL ISSUES TO BE DISCUSSED**

The Division of Public Utilities and Carriers ("Division") submits the following responses to the First Set of Legal Issues to be Discussed. Since certain jurisdictional facts relating to this matter have not been adduced at this time, and the hearing on this matter has not yet taken place, the Division reserves all of its rights to amend these responses at a later time.

1. Please advise the Commission as to the status of Case No. PC2002-2329. It is unclear whether the Temporary Restraining Order was made effective for ten (10) days under RI RCP 65 or until further order of court. Therefore please provide the Commission with a copy of Justice Fortunato's Written Order.

Response: See attached.

2. Please explain the application of R.I.G.L. §§ 28-27-28, 28-27-29 to New England Gas Company employees who terminate, restore or activate service or who test meters.

Response: The Department of Labor and Training ("DLT") enforces these statutes, and therefore, is the appropriate agency to render an opinion as to their scope of application. The Division reserves its right to comment as to the application of these statutes after it reviews DLT's response.

3. Please explain the interplay between R.I.G.L. §§ 28-27-28, 28-27-29 and the recently enacted R.I.G.L. § 39-2-23. Are they in conflict with one another? If a conflict does exist, which statute controls and why?

Response: As DLT can best provide the Commission with the application of the scope of Sections 28-27-28 and 28-27-29 at this time, DLT is in the best position to provide the Commission with an initial response regarding the

interplay between these statutes and § 39-2-23. The Division reserves its right to comment upon DLT's response regarding the interplay among the three statutes. As a general rule, however, statutes in *pari materia* should be considered together so that they "will harmonize with each other" and be "consistent with their general object and scope." *E.g., Burns v. Sundlun*, 617 A.2d 118 (R.I. 1992).

4. Please address whether or not Judge Fortunato's decision of May 15, 2002 in PC2002-2329 to require gas works to be licensed affects the "certification language of R.I.G.L. § 39-2-23. In other words, does Judge Fortunato's interpretation of R.I.G.L. §§ 28-37-28, 28-27-29 require the Commission to mandate New England Gas employees engaged in the termination, restoration or activation of gas service or to test meters to be licensed?

Response. See Response to Legal Issue No. 3. In any event, the Rhode Island Supreme Court has held that decisions of the Superior Court do not possess *stare decisis* effect in Rhode Island. *E.g., Forte Bros. v. Dept. of Transportation*, 541 A.2d 1194, 1196 (R.I. 1988).

5. Since Justice Fortunato's decision in Case No. PC2002-2329 was made the day before R.I.G.L. § 39-2-23 was enacted, does the statute supersede the court's decision/interpretation of R.I.G.L. § 28-27-29.

Response: No. The Rhode Island Supreme Court has held that decisions of the Superior Court do not possess *stare decisis* effect in Rhode Island. *See e.g., Forte Bros, supra.*

DIVISION OF PUBLIC UTILITIES  
AND CARRIERS  
By its attorneys,

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### **CERTIFICATE OF SERVICE**

I certify that on the \_\_\_ day of July, 2002, the within responses were forwarded to the individuals on the attached service list.